

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

FEB 22 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the Marriage of:)	
)	
SILVIA FLORES,)	2 CA-CV 2011-0106
)	DEPARTMENT A
Petitioner/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
and)	Not for Publication
)	Rule 28, Rules of Civil
GILBERTO MARTINEZ,)	Appellate Procedure
)	
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. DO200500361

Honorable Peter J. Cahill, Judge

APPEAL DISMISSED

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Phoenix
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ECKERSTROM, Presiding Judge.

¶1 Following the entry of a marital dissolution decree in 2008, the parties raised numerous issues in the trial court relating to the enforcement and modification of the judgment. On appeal, appellant Silvia Flores maintains the trial court erred in modifying the decree by an order filed May 4, 2011. We dismiss for lack of jurisdiction.

¶2 On May 12, 2011, appellee Gilberto Martinez filed a “Motion to Amend Judgment” in the superior court pursuant to Rule 84, Ariz. R. Fam. Law P.¹ The clerk’s time-stamp on the motion indicates it was filed at 11:19 a.m. Flores filed her notice of appeal less than an hour later, at 12:16 p.m. Later that month, Flores also filed a notice in the superior court indicating she would not file a response to Martinez’s motion, unless ordered to do so, because “the Arizona Court of Appeals has jurisdiction over the Order that [Martinez] seeks to Amend.”

¶3 The trial court then directed Flores to respond to the motion, which she did, and a hearing was held on the matter in June 2011. The court denied Martinez’s motion to amend the judgment in July 2011. The record reveals no attempt by Flores to file a new or amended notice of appeal.

¹Although the motion specifically cited “Rule 84 of the Arizona Rules of Civil Procedure,” this rule simply concerns an appendix of standardized forms, and it obviously had no application to the case. Rule 84, Ariz. R. Fam. Law P., is the rule allowing a “Motion to Alter or Amend a Judgment or Order” in a dissolution proceeding. *See* Ariz. R. Fam. Law P. 1 (“These rules govern the procedure in . . . matters arising out of Title 25, *Arizona Revised Statutes (A.R.S.)*”). Despite the erroneous reference to the Rules of Civil Procedure, the substance of Martinez’s motion left no doubt that it was brought pursuant to the Rules of Family Law Procedure, as the trial court clarified in its subsequent ruling. *Cf. John Carrollo Eng’rs v. Sharpe*, 117 Ariz. 413, 415, 573 P.2d 487, 489 (1977) (recognizing “style should not control substance”).

¶4 Martinez has not filed an answering brief in this court. Nevertheless, our jurisdiction is provided and limited by statute, *Campbell v. Arnold*, 121 Ariz. 370, 371, 590 P.2d 909, 910 (1979), and we have an independent duty to confirm whether we have jurisdiction over the case before us. *Robinson v. Kay*, 225 Ariz. 191, ¶ 4, 236 P.3d 418, 419 (App. 2010).

¶5 We may assume here, without deciding, that the trial court's signed, post-decree modification order was a "special order" within the meaning of A.R.S. § 12-2101(A)(2) that was appealable upon being entered on May 4, 2011. *See* Ariz. R. Fam. Law P. 78 and 81 (specifying requirements for entry of judgment or appealable order); *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 3, 9 P.3d 329, 331 (App. 2000) (setting forth criteria for appealable "special orders" under § 12-2101); *see also Haroutunian v. Valueoptions, Inc.*, 218 Ariz. 541, ¶¶ 7, 10, 189 P.3d 1114, 1117-18, 1118-19 (App. 2008) (noting entry of judgment, for purposes of determining time to file notice of appeal, "occurs when the judgment is file-stamped by the clerk"). Even allowing this assumption in favor of Flores, the fact remains that Martinez's Rule 84 motion was timely filed before Flores filed her notice of appeal. Thus, the prior filing invalidated what otherwise would have been a proper notice.

¶6 The timely filing of a valid notice of appeal is a prerequisite to the exercise of appellate jurisdiction. Ariz. R. Civ. App. P. 8(a); *State ex rel. Ariz. Structural Pest Control Comm'n v. Taylor*, 223 Ariz. 486, ¶ 3, 224 P.3d 983, 984 (App. 2010). Rule 9(b)(3), Ariz. R. Civ. App. P., expressly provides that a Rule 84 motion extends the

time for filing a notice of appeal. As our supreme court recently reaffirmed: “[A] notice of appeal filed . . . while any party’s time-extending motion is pending before the trial court . . . is ‘ineffective’ and a nullity.” *Craig v. Craig*, 227 Ariz. 105, ¶ 13, 253 P.3d 624, 626 (2011), quoting *Smith v. Ariz. Citizens Clean Elections Comm’n*, 212 Ariz. 407, ¶ 39, 132 P.3d 1187, 1195 (2006). The rationale behind this seemingly formalistic rule is to prevent “‘disrupt[ions of] the trial process’” that “‘leav[e] the superior court uncertain as to its jurisdiction to decide a pending motion.” *Id.* ¶ 14, quoting *Baumann v. Tuton*, 180 Ariz. 370, 372, 884 P.2d 256, 258 (App. 1994). The rule also helps to avoid the “piecemeal appeals” that could result if cases were decided while unresolved motions remained below. *Maria v. Najera*, 222 Ariz. 306, ¶ 5, 214 P.3d 394, 395 (App. 2009).

¶7 Flores has failed to specify any jurisdictional basis for her appeal, as is required by Rule 13(a)(3), Ariz. R. Civ. App. P., and she has offered no argument as to whether Martinez’s freshly filed Rule 84 motion actually was “pending before the trial court,” within the meaning of *Craig*, when she filed her notice of appeal. 227 Ariz. 105, ¶ 13, 253 P.3d at 626. On the facts before us, and under the reasoning of that case, we see no reason why the relatively short period of time separating the motion and the notice would have any jurisdictional consequence. The salient fact here is that Flores filed her notice of appeal “[b]efore the court ruled on [her former] Husband’s motion.” *Id.* ¶ 2. Thus, it was invalid. And Flores subsequently failed to file a timely notice of appeal from the court’s denial of Martinez’s Rule 84 motion. See Ariz. R. Civ. App. P. 9(a),

(b)(3) (notice of appeal must be filed no later than thirty days after entry of order denying motion to amend judgment).

¶8 We therefore lack jurisdiction and order the appeal dismissed.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge